

PARTICIPATING ADDENDUM
For State of Texas
(Texas Department of Information Resources)
WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing L.P.
MASTER PRICE AGREEMENT
92-00151

1. Scope: The State of Texas, acting by and through the Department of Information Resources (DIR), is the Participating Entity under this Participating Addendum having the authority to enter into this Participating Addendum on behalf of Texas state agencies as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and local governments as defined in Section 791.003, Texas Government Code.

2. Changes:

- a. Paragraph 1(Definitions)

Replace the text of the "Equipment" definition with the following:

"Equipment" refers to desktop and laptop computers, servers, workstations, displays, peripherals and LAN and hardware components and spare parts listed in the contractor's ESS/ Peripherals to include: Monitors; Audio/Video cards; Accessories; Storage and Memory. This Agreement shall not include the following: Commodity Software (excluding OS software), Printers, Networking Equipment, Scanners, Cameras, and Plotters.

Replace the word "software" of the "Products" definition with the words "non-commodity software".

- b. Paragraph 8 (Termination)

Subparagraph A replace NMSPA with DIR.

- c. Paragraph 31 (Applicable Law)

Replace the text with the following:

This Agreement shall be governed in all respects by the law and statutes of the state of Texas.

- d. Paragraph 46 (Administrative Reporting and Fee)

Replace the text with the following:

Vendor agrees to provide monthly Agreement utilization reports to the Agreement Administrator in accordance with the following schedule. The reports will be due 15 business days after the end of each month.

A. A monthly report shall state the sales under the contract for the period subtotaled by Procuring Agency name. The report shall be accompanied with a check payable to Texas Department of Information Resources for the calculated Administrative Fee.

B. A detail sales report will be issued monthly that includes no less than each Procuring Agency, Order Date, Ship Date, Manufacturer, Quantity, Procuring Agency Price, Extended Price, Procuring Agency Purchase Order Number, Shipping Address, and other information as agreed to by DIR and Dell.

C. Reports, as required by DIR, that will reflect the amount of work being subcontracted to Historically Underutilized Businesses, as defined by Texas State law.

All reports are to be submitted electronically as reasonably defined by DIR.

The failure to file the utilization reports and fees on a timely basis may constitute grounds for suspension of the Agreement or termination of the Agreement for cause. Vendor's liability for any breach of this Section 46 shall not under any circumstances exceed the amount of Administrative Fees owed to DIR by Vendor under this Section.

e. Add new paragraph (Texas Administrative Fee)

The Administrative Fee shall be included in the charges for the products and services set forth on the website and quoted to Procuring Agencies. The Vendor's obligation to pay such amounts shall be suspended to the extent that its payment of collection violates any state or federal laws.

Vendor will pay DIR, on a monthly basis, the Fee based on a percentage of the dollar value of Vendor purchases made by Procuring Agencies pursuant to this Agreement. Payment is due based on sales, net of returns and credits. Vendor will provide payment to DIR within thirty (30) days after the end of each month.

Total Annual Volume	Maximum Total Annual Administrative Fee
\$ - \$52,000,000	$\frac{3}{4}$ of 1% (0.0075)
\$52,000,001+	0%

The total Administrative Fee due shall not be less than \$200,000 for any given contract year (12 months) Contract year is September 1 through August 31.

f. Add new paragraph (Technology Access, Section 2157.005, Texas Government Code)

The Vendor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to DIR and each Customer purchasing products under this Agreement that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

g. Add new paragraph (Commodity Software)

Texas Gov't Code, Section 2157.068 requires State Agencies to buy commodity software in accordance with contracts developed by DIR unless the agency obtains a waiver from DIR. Therefore, Vendor agrees to coordinate all commodity software sales made coincident to this agreement through existing DIR contracts if available.

h. Add new paragraph (Dispute Resolution)

The dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used to attempt to resolve any claim for breach of contract

i. Delete paragraph 20 in its entirety and replace with the following:

Vendor shall maintain adequate records to establish compliance with this Agreement until the later of a period of four years after termination of this Agreement or until full, final and unappealable resolution of all audit or litigation issues which arise under this Agreement. Such records shall include documentation of the date each Procuring Agency placed an order, identification of the ordering Procuring Agency, the product and quantity ordered, including the name of the product and the publisher or manufacturer of the product, the price quoted to the Procuring Agency for such order, the Procuring Agency purchase order number, the order date, ship date, , shipping address, the invoice sent to the Procuring Agency relating to the order, the record of Procuring Agency payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Agreement and such other documentation as DIR may request.

Vendor shall grant access to all State of Texas purchase orders and Dell invoices that pertain to this agreement to DIR, the auditors designated by DIR, including auditors of the State Auditors' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Vendor without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, auditing and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the State of Texas will be available as agreed upon at time of audit, to DIR staff and designees as needed to clarify any questions which arise from such audit. Vendor shall provide office space to DIR staff during the performance of an audit.

j. Add new paragraph (Vendor Certifications)

Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 31.006 of the Texas Family Code and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Agreement; and (v) during the term of this Agreement, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

k. Add new paragraph (Buy Texas)

With respect to all services, if any, purchased under this Agreement, Vendor represents and warrants that it shall buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials. When requested by DIR, Vendor shall timely provide documentation satisfactory to DIR evidencing the use of Texas products and materials for providing any services provided under this Agreement. If Vendor is unable to find Texas products and materials to use in providing any services provided hereunder, Upon DIR's request, Vendor shall provide documentation satisfactory to DIR evidencing Vendor's good faith efforts to purchase and use Texas products and materials in providing services hereunder.

l. Add new paragraph (Ability to Conduct Business in Texas)

The Vendor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas or any of its political subdivisions.

Vendor acknowledges and agrees that, to the extent Vendor owes any debt or delinquent taxes to the State of Texas, in accordance with Section 403.055(h), Government Code, any payments Vendor is owed under this Agreement will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Vendor owes the State of Texas until the debt or delinquent taxes are paid in full.

Vendor is a "Qualified Information Systems Vendor" as defined in Section 2157.001 of the Texas Government Code. All products and services offered to Procuring Agencies under this Agreement are listed in Vendor's catalogue on file with the General Services Commission.

m. Add new paragraph (Suits or Pending Proceedings)

To the best of the Vendor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Vendor, which if determined adversely to the Vendor will have a material adverse effect on the ability of the Vendor to fulfill its obligations under the Agreement.

n. Add new paragraph (Agreement Structure)

Each purchase order issued under this Agreement that is accepted by Vendor will be subject to this Agreement. Purchase transactions between the parties shall be governed by the terms and conditions of this Agreement and any Attachments thereto. In the event of a conflict between a term of this Agreement (or an Attachment to the Agreement) and a purchase order issued by a Procuring Agency, the Agreement term shall control. No additional term and condition of a purchase order issued by a Procuring Agency can weaken a term or condition of this Agreement.

o. Add new paragraph (Trade Shows)

Vendor understands and agrees that it must participate fully by providing a manned booth display or similar presence at no less than two trade shows or similar functions sponsored by DIR each calendar year, at the Vendor's expense.

p. Add new paragraph (Promotion of Agreement)

Vendor may use the DIR logo in the promotion of this Agreement to Procuring Agencies with the following stipulations: (a) the logo may not be modified in any way; (b) when displayed, the size of the DIR logo must be equal to or smaller than the Vendor's logo; (c) the sole use of the DIR logo will be to communicate the availability of the Products and Services available under this Agreement to Procuring Agencies; and (d) any other use of the DIR logo requires DIR's prior written approval.

The DIR may use the Vendor's name and logo in the promotion of this Agreement to Procuring Agencies to communicate the Products and Services available under this Agreement to Procuring Agencies with the following stipulations: (a) use of the logo may be on the DIR Web Site or on printed materials distributed to Procuring Agencies; (b) DIR agrees to comply with any guidelines provided by Vendor on the proper use of Vendor's logo; and (c) any other use of Vendor's name or logo requires Vendor's prior written approval.

3. Lease Agreements: Lease agreement terms and conditions have not been approved.

4. Primary Contact: The primary contact individual for this participating addendum is as follows:

**Bill Peek
TX DIR
PO Box 13564
Austin, TX 78711**

5. Price Agreement Number: All purchase orders issued by procuring agencies within the jurisdiction of this participating addendum shall include the following Contract Code number: 90131.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

State of Texas

By: *Patrik W. Hogen*

Name: *Patrik W. Hogen*

Title: *Director*

Date: *8/16/01*

Contractor: Dell Marketing L.P.

By: *Raymond Wolf*

Name: Ray Wolf

Title: Director, Public Contracts

Date: *8/15/01*

AMENDMENT #1
PARTICIPATING ADDENDUM
FOR STATE OF TEXAS
(Texas Department of Information Resources)
WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing, L.P.
MASTER PRICE AGREEMENT
92-00151

This Amendment Number 1 is hereby affixed to and shall become part of the above-mentioned Agreement entered between Dell Marketing, L.P. ("Contractor") and the Texas Department of Information Resources ("DIR") on behalf of the State of Texas. This Amendment Number 1, as incorporated in the Agreement, is subject to all terms, conditions, restrictions, and limitations contained in the Agreement not in conflict with this Amendment including the limitation of liability provision. The Agreement is hereby modified as follows:

Term #1. Scope, is hereby restated to read:

The State of Texas, acting by and through the Department of Information Resources (DIR), is the Participating Entity under this Participating Addendum having the authority to enter in this Participating Addendum on behalf of any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Term #2. Changes. Item b. (Dispute Resolution), is hereby restated to read:

Applicable to State Agency purchases only, for disputes not resolved in the normal course of business or to resolve any claim for breach of contract, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used.

Term #2. Changes. Item c. (Handling of Written Complaints), hereby added:

In addition to other remedies contained in this Agreement, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Matt Kelly
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 936-6550, voice
(512) 475-4759, fax
Email: matt.kelly@dir.state.tx.us

Term #3. Lease Agreements. is hereby amended to read:

Contractor may lease Equipment to Procuring Entities in accordance with the terms and conditions approved by Contractor and DIR under Master Lease Agreements that are in full force and effect with Dell Marketing, L.P. and Dell Financial Services. The DIR Administrative Fee associated with the Master Lease Agreements shall be paid and reported as stated within this Agreement.

All other terms and conditions of the Participating Addendum and Agreement shall remain in full force and effect. This Amendment is effective on the date last signed below.

IN WITNESS WHEREOF, this Amendment has been executed by the duly authorized representatives of the parties.

DELL MARKETING, L.P.

**THE STATE OF TEXAS, acting
by and through the
DEPARTMENT OF
INFORMATION RESOURCES**

By: Belvis Jimmerson

By: Patrick W. Hogan

Name: Belvis Jimmerson

Name: Patrick W. Hogan

Title: Contract Manager

Title: Director of Business Operations

Date: September 9, 2002

Date: 9/10/02

Legal: [Signature] 9/10/02

AMENDMENT #2
PARTICIPATING ADDENDUM
FOR STATE OF TEXAS
(Texas Department of Information Resources)
WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing, L.P.
MASTER PRICE AGREEMENT
92-00151

This Amendment Number 2 is hereby affixed to and shall become part of the above-mentioned Participating Addendum entered between Dell Marketing, L.P. ("Contractor") and the Texas Department of Information Resources ("DIR") on behalf of the State of Texas. This Amendment Number 2, as incorporated in the Participating Addendum, is subject to all terms, conditions, restrictions, and limitations contained in the Participating Addendum and Agreement not in conflict with this Amendment including the limitation of liability provision. The Participating Addendum is hereby modified as follows:

Term #2, Changes, Item a, Paragraph 1 (Definitions):

The Definition of Equipment is hereby restated to read:

"Equipment" refers to any information resource technology related product manufactured or produced by the Contractor. To include, but not be limited to: desktop and laptop computers, servers, workstations, displays, peripherals, and LAN and hardware components and spare parts listed in the Contractor's ESS. Third-Party hardware components shall include and be limited to those listed in Appendix A to this Amendment. This Participating Addendum shall not include Software (excluding preloaded operating system and anti-virus software) or other third-party hardware components not listed within Appendix A.

Term #2, Changes, Item e, (Texas Administrative Fee):

This section is deleted in its entirety and hereby restated to read:

The Administrative Fee shall be included in the charges for the Equipment and Services set forth on the website and quoted to Procuring Entities. The Contractor's obligation to pay such amount shall be suspended to the extent that its payment of collection violates any state or federal laws.

Contractor will pay DIR, on a monthly basis, the Fee based on a percentage of the dollar value of purchases made by all Procuring Entities pursuant to this Agreement. Payment is due based on sales, net of returns and credits. Contractor shall provide payment to DIR within thirty (30) days after the end of each month. The DIR Administrative Fee shall be ¼ of one percent (0.0025). The cumulative total administrative fee due under this Participating Addendum shall not be less than \$397,000.00. The Fee and the Cumulative

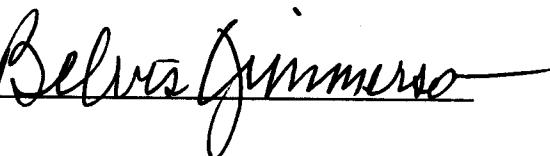
Total Fee shall remain firm for any given contract year (12 months), contract year being September 1 through August 31.

All other terms and conditions of the Participating Addendum and Agreement shall remain in full force and effect. This Amendment is effective on the date last signed below.

IN WITNESS WHEREOF, this Amendment has been executed by the duly authorized representatives of the parties.

DELL MARKETING, L.P.

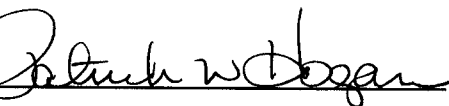
**THE STATE OF TEXAS, acting
by and through the
DEPARTMENT OF
INFORMATION RESOURCES**

By: 

Name: Belvis Jimmerson

Title: Contract Manager


Date: November 13, 2002

By: 

Name: Patrick W. Hogan

Title: Director of Business Operations

Date: 11/8/02

Legal: 
11/8/02

Appendix A

Third-Party Peripherals

Printers and Multifunction			
HP	Lexmark	IBM	Xerox
Brother	Tally	Minolta	Epson
Okidata	Canon	Sony	Panasonic

Scanners		
HP	Epson	Canon
Visioneer	Microtek	Panasonic

Monitors			
Viewsonic	Philips	Hitachi	Panasonic
NEC	Sony	CTX	KDS USA

PDA's		
Palm	Handspring	HP
Casio	Blackberry	Sony

Digital Cameras			
Olympus	Kodak	Nikon	Casio
Fujifilm	Minolta-QMS	Sony	HP
Panasonic	Toshiba	Canon	

Projectors			
Infocus	Epson	Proxima	Sony
Panasonic	Toshiba	Philips	Viewsonic
Canon	Sharp		

Power Protection			
APC	Belkin	TrippLite	Kensington

Modems			
US Robotics	Creative Labs	Xircom	Multi-Tech

Input Devices			
Microsoft	Logitech	Viewsonic	Kensington
Wacom	Interlink Electronics	Targus	

Cables		
D-Link	TrippLite	Cables To Go
Xircom	StarTech	Belkin

Graphics and Audio			
Creative Labs	Dazzle	JVC	Sony
VisionTek	NEC	Yamaha	Diamond Multimedia
Logitech	Altec Lansing	ATI Technologies	Turtle Beach

Memory		
Kingston	Viking	Crucial Technology

Networking			
Extreme Networks	Avaya	HP	3COM

Video Conferencing
Polycom

Smart Boards
Interlink Electronics

Storage			
Iomega	Maxell	Panasonic	Plextor
HP	Imation	Adaptec	Yamaha
Western Digital	Maxtor	Seagate	Adic
Sony	QPS	Exabyte	